

# Notice of Allowability

Application No.

10/608,863

Examiner

Zachary C. Howard

Applicant(s)

HASHIDA ET AL.

Art Unit

1646

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/27/2006.
2. ☒ The allowed claim(s) is/are 1,2,56 and 57.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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**JANET L. ANDRES**  
**SUPERVISORY PATENT EXAMINER**

### EXAMINER'S COMMENT

Applicants have submitted copy of the 6/7/2004 IDS as part of the 2/27/2005 response. Applicants comment: "As requested by the Examiner, a clean copy of the PTO-1449 form enclosed with the Information Disclosure Statement (IDS) titled on 6/7/2004 is being provided so that the Examiner can indicate consideration of references AM, AO and AQ for the application filewrapper."

First, it is noted that in the 11/18/2005 Office Action, the Examiner did not request a clean copy of the IDS, but rather a new IDS listing the references.

However, upon further consideration, the Examiner correctly indicated that these references were not considered in 5/13/2005 Office Action.

37 CFR 1.63(c)(2) states, "When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications as specified in paragraph (a) of this section may be submitted without copies of the other patents or publications, **provided that it is stated that these other patents or publications are cumulative.**" [emphasis added].

The 6/7/2004 IDS does not state that the missing references were *cumulative*. Instead, the 6/7/2004 IDS states, "Enclosed herewith is form PTO-1449: (x) Copies of the cited references (AA, AL, AN, AP, AK, AS and AT) are enclosed (AM corresponds to AL, AO corresponds to AN, and AQ corresponds to AP)" (pg 2). As indicated, copies of the references AM, AO and AQ were not included with the IDS. As the IDS did not contain the required statement under 37 CFR 1.63(c)(2) that the missing references were *cumulative*, the Examiner was correct in crossing these references off the IDS.

Furthermore, even if the IDS contained the statement that the missing references were cumulative with submitted references, MPEP 609.04(a)(II) instructs the Examiner

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to only consider the copy that is submitted and cross out the cumulative information. See MPEP 609.04(a)(II), which states, "There are exceptions to this requirement that a copy of the information must be provided...37 CFR 1.98(c) states that when the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications provided that a statement is made that these other patents or publications are cumulative. The examiner will then consider only the patent or publication of which a copy is submitted and will so indicate on the list, form PTO-1449, or PTO /SB /08A and 08B, submitted, e.g., by crossing out the listing of the cumulative information."

For these reasons, the Examiner has crossed the references off the copy of the 6/7/2004 IDS that Applicant submitted 2/27/2006.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary C. Howard whose telephone number is 571-272-2877. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet L. Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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